

U. S. PTO Customer No. 25280

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REMARKS

Previously withdrawn claims 1-12, 20 and 21 have been canceled. No claims have been added or amended. Thus, claims 15-18, 22 and 25-27 are subject to continued examination. Each of these claims is believed to be in condition for allowance. Accordingly, an action to that effect is requested at this time.

Double Patenting:

Claims 15, 17, 18, 22, 25 and 26 stand rejected under the doctrine of obviousness-type double patenting as being obvious over claims 1-3 of the Inventor's U.S. Patent No. 6,086,095 in view of Bunker et al. Continued rejection on this basis is respectfully traversed and reconsideration is requested.

After careful examination Applicant must respectfully submit that the teachings ascribed to Bunker et al. are not present. Specifically, as best understood, contrary to the position taken by the Office Action, Bunker does not teach an air bag having an offset created by closing a slit, notch or opening with a seam. At best, the portion of Bunker et al. cited by the Examiner simply describes securing an inflator within an opening. There is no reference at all as to the creation of an offset. Rather, the structure appears to be symmetrical.

Since every element of the invention must be taught or suggested, the deficiency in the teachings of Bunker et al. appears to mandate the withdrawal of obviousness type double patenting rejection. However, in the event that the claims are otherwise in condition for

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allowance, and if requested by the Examiner in order to facilitate prosecution, Applicant will provide an appropriate terminal disclaimer.

ART REJECTIONS:

Claims 15, 17, 18, 22, 25 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,454,594 to Krickl in view of Bunker et al. Continued rejection on this basis is respectfully traversed and reconsideration is requested.

In order to establish a *prima facie* case of obviousness, the prior art relied upon must teach or suggest all elements of the claim. As pointed out above, in the present instance the secondary reference to Bunker et al. does not appear to provide the teaching indicated by the Office Action. In particular, as best understood Bunker does not teach an air bag having an offset created by closing a slit, notch or opening with a seam. Rather, the structure appears to be symmetrical. Thus, paragraph 10 of the Office Action appears to be incorrect when it states that Bunker et al. discloses that it is well known for an airbag cushion to have at least two fabric components having an offset created by closing a slit, notch or opening with a seam. Thus, it is respectfully submitted that the rejection on the basis of Bunker et al. as the secondary reference should not be maintained.

In addition to the apparent deficiency of the cited art to teach or suggest an offset created by closing a slit, notch or opening with a seam, Applicant also respectfully submits that the Office Action has inappropriately characterized the recited fabric usage factor levels as a mere change in properties of a known product and has inappropriately the standards of In re Aller relating to optimization in rejecting the claims.

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Sole independent claim 15 recites an airbag cushion with a specific numerical range for fabric usage factor which is shown by the data in the application to be substantially superior to known structures. That is, the cushions of the present invention use less fabric per enclosed unit volume than prior structures.

The case law cited by the Examiner relates to the identification of optimum ranges which are achieved by routine experimentation. As understood, the Office Action takes the position that since a reduction in fabric usage is a generally recognized goal, that the development of an airbag cushion with low fabric usage per unit area within the claimed ranges is non-inventive despite the showing in the specification of an improvement over known commercial structures. Applicant must respectfully disagree on grounds that the comparative data indicates that much more than routine experimentation or modest changes to the prior art would be required to reach the claimed invention.

Applicant respectfully brings to the Examiner's attention that the controlling precedent of the Court of Appeals for the Federal Circuit as set forth in the case of In re Glaug, 62 USPQ2d 1151 (Fed. Cir. 2002) indicates that "...when a measured property serves to point up the distinction from the prior art, or advantages over the prior art, that property is relevant to patentability, and its numerical parameters can not only add precision to the claims but also may be considered along with all of the evidence in determination of patentability." *Id.* at 1155. In the present case the fabric usage factor of embodiments of the present invention has been compared to six known airbag structures for similar applications. The cushions of the present invention were in all cases superior.

In view of the comparative data provided, Applicant respectfully submits that the fact that reduced fabric usage was a well-known goal actually supports the position of patentability.

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In this regard Applicant respectfully submits that the manufacturers of the commercial products that were the subject of comparative testing would not have intentionally used a greater quantity of fabric than was considered necessary. Moreover, these manufacturers would have been able to engage in routine optimization on their products. Thus, it appears that inventive effort over and above a mere change in product properties or routine optimization would have been required to achieve cushions with the recited fabric usage factors. Thus, it is respectfully submitted that these claim elements should not be discounted.

Claims 16 and 27 stand rejected under 35 U.S.C. 103(a) as being obvious over Krickle in view of Bunker et al. and further in view of U.S. Patent 5,533,755 to Nelson et al. Continued rejection on this basis is respectfully traversed and reconsideration is requested.

Claims 16 and 27 each contain a specific numerical range of fabric weight factor in combination with the recited fabric usage factor. As shown by the comparative data in the application, the fabric weight factor levels achieved are substantially better than corresponding known levels for prior known structures for similar applications. Applicant respectfully submits that such dramatic improvements over the known art is properly considered and further supports patentability.

CONCLUSION / AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT:

On the grounds as set forth above, Applicant respectfully requests that all remaining claims be passed to issue. Alternatively, Applicant requests that a non-final action be issued which does not rely upon Bunker et al. as a basis for rejection. While an attempt has been made to address all outstanding issues, to any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

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While the submission of this response is believed to be timely, to any extent required, a petition for extension of time is hereby made.

Please charge any fees required for acceptance of this amendment to Deposit Account 04-0500.

Respectfully submitted,

March 5, 2004


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 703-872-9306 on March 5, 2004.


Stacy Coats Legal Department